

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ORIGINAL

In the Matter of
Advanced Television Systems
and Their Impact upon the
Existing Television Broadcast
Service

MM Docket No. 87-268

Fourth Further Notice of Proposed
Rule Making and Third Notice
of Inquiry

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS OF Polar Broadcasting Inc.

Polar Broadcasting, Inc., ("Polar") hereby submits its comments in the proposed rule making Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry ("NPRM"). Polar seeks to comment on the adverse effects of the policies set forth in this NPRM on low power television.

Polar, owns and operates three LPTV stations K30BI, K33DJ, and K08LC. As an example of the level of service to the local community; K30BI, San Francisco-Oakland-San Jose broadcasts 3 hours of live public affairs programming each weekday focusing on family and political issues. K30BI also airs 17 hours a week of national news and produces 1.5 hours of live interactive programming in its studio each weekday.

Our "Video Preview Show" is a one hour youth oriented show (10:00-11:00 pm, Monday-Friday) with live calls on the air; 80% of the caller are between 11 and 24 years of age. The show plays music videos and expounds anti-violence, anti-drugs and anti-gangs, while

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emphasizing education and staying in school. In our last telephone busy call count from Pacific Bell, we averaged 685 busy calls per night, and one Friday night we received 1,347 busy calls during the hour. The "Video Preview Show" regularly receives calls from 850 Bryant Street (San Francisco City Jail).

K30BI also produces business programs like "Trade and Barter", and "Real Estate & Loans" (1/2 hour programs Tuesday and Friday respectively). The station produces an instructional the "Music Clinic" a show teaching music on Wednesday evening at 8:00 PM. This show was developed to help students learn and read music. This program helps students who have lost class room instruction because much of the local school arts and music program budgets have been cut. The program has had guest like Harvey Mandel, Gregorico, and MC Hammer is scheduled for November 22, to aid in the instruction. K30BI has also produced special programs like the award winning "Salute to Hispanic Excellence" a 2 hour special on the Hispanic contributions in our society.

I. POTENTIAL ADVERSE IMPACT OF THE COMMISSION'S ATV PROPOSAL ON THE COMMISSION'S LONG STANDING POLICY OF FOSTERING PROGRAMMING AND OWNERSHIP DIVERSITY.

Since the inception of the Communications Act of 1934, it has been the intent of the Federal Communications Commission (referred to "FCC" or "Commission") to establish broadcast station ownership patterns that represents the views of the public as these relate to the diverse communications industries and sub-industries. One of

the basic underlying considerations of the 1934 Act was the desire to effectuate policy that discouraged the formation of monopolies in broadcast and effectuate ownership policies that would as a result diversify program content.¹

With this in mind, the Commission has set precedent with its adoption of various policies and programs which are intended to minimize whatever negative effect small entities might face in the advent of new rule makings and new technologies.² For the purpose of this proposed rule making Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry ("NPRM"), Polar seeks to comment on the adverse effects of the policies set forth in this NPRM on low power television. The effect of the Commission's decision to exclude low power television broadcasters from this important rule making will effectively and needlessly destroy a significant number of LPTV stations. Those LPTV stations who have somehow been able to survive the first years of the transition will almost certainly be lost as windows are opened for the general public to file, and the LPTV operator is exposed the "sharks of the filing mills".

Throughout the creation of the diversity policies for television broadcast service, the Commission adhered to the principle that diversification better serves the needs of the public at large. The Commission firmly stated that the vitality of the

¹ See Section 307 of the Communications Act relating to the efficient distribution of the spectrum.

² See, for example, the small business protections adopted by Congress in the auction provisions of the Communications Act.

U.S. system of broadcasting depended largely on a diversified ownership and, hence, diversification of programming and service content.

The low power television³ medium is a niche broadcasting service with the potential to provide specialized programming to specialized markets, particularly under served and ethnic communities. According to industry experts, approximately 42% of LPTV stations provide the public with programming for special demographic populations, reflecting fulfillment of the Commission's initial goal when establishing LPTV service in 1983. Moreover, LPTV stations on the air in the U.S. now number more than 1751 stations.⁴ The present LPTV figure comprises 1193 UHF and 558 VHF stations, compared to the nation's full power commercial and educational stations which now number approximately 1,542 stations.⁵

Despite the growth in ownership in the LPTV industry and the fact that LPTV broadcasters have made great efforts in the last decade to acquaint the various Commissioners with the unique and diverse services that LPTV provides to the public and record the successes that the LPTV industry has achieved with the Commission's stated goals of providing universal, over-the-air television service, the Commission's Fourth Notice of Proposed Rule making and Third Notice of Inquiry has excluded low power broadcasters from any

³ Report and Order, March 4, 1982

⁴ Part 74 CFR and Report and Order, 1982.

⁵ See station totals in most recent Public Notice.

consideration in the transition plan and the proposed statement of proposed ATV policies.

Polar is aware of the increased range and variety of new service capabilities digital technology will bring to television, as well as the capability to deliver multiple program streams over one 6 MHz channel that the conversion to digital will bring. But Polar does not understand the reason these promised new services would be *needlessly withheld* from this segment of the television broadcasting industry in this ATV rule making.

The Commission has stated that its initial reason for exclusion of LPTV was that the broader public interest would be best served by limiting initial channel allocation to existing eligible broadcasters. That being the reason, then why not include the more than 800 licensed LPTV entrepreneur broadcasters that are working and serving the communities with local and specialize programming? Broadcasting is exclusively and exactly what we do!

In compliance with the Commission's principles of diversification of ownership, and universal service⁶ and the U.S. Constitution, any technical standards used to develop an allotment table should be readily and equally available to all broadcasters and the diverse audiences they serve, not just full power broadcasters. To exclude LPTV broadcasters from the ATV proceeding is to say that the Commission does not believe in its long stated standard that the public interest of all Americans would be served

⁶ See Sixth Report and Order (1952).

if all Americans could participate in the continued reception of television.

II. POTENTIAL IMPACT ON THE COMMISSION'S OBJECTIVE OF PROMOTING DIVERSITY OF VIEWPOINTS IN A DIGITAL WORLD.

The Commission should continue to value localism in an era of megamergers. LPTV is one of the few remaining services that focuses on local content. It is the local programming of that low power television broadcasters that bring services and programming to the under served and ethnic communities throughout the U.S. Furthermore, part of the Commission's goals in inaugurating LPTV service were to bring local programming to communities that had never been served or had been under served by full power television. Equally as important, was the desire to increase diversity in ownership in television broadcasting among women and minorities, since entrant of minorities in full power television is lower than that of LPTV due to the lack of access to capital by minorities. Currently there are 31 full power TV stations owned by minorities versus 124 LPTV stations owned by minorities.

III. POTENTIAL IMPACT OF SPECTRUM RECOVERY AND CREATION OF CONTIGUOUS BLOCKS OF SPECTRUM ON LOW POWER TELEVISION BROADCASTERS.

With respect to the recovery of spectrum, in the Second Report/Further Notice, the Commission put broadcasters on notice that when ATV becomes the prevalent medium, broadcasters would be required to surrender a 6 MHz channel and cease broadcasting in

NTSC.⁷ Later, in the Third Report/Further Notice, the Commission stated its plan to award broadcasters interim use of an additional 6 MHz channel to permit a smooth, efficient transition to an improved technology with as much certainty and as little inconvenience to the public and the industry as possible.

It is evident that the Commission remains committed to the recovery of spectrum to full power broadcasters, yet it's not evident that the Commission remains committed to ownership rights of LPTV broadcasters with the advent of digital technology, with the possibility of eliminating a vast number of existing LPTV licensees. Furthermore, the Communications Act of 1934 mandates that the Commission allocates spectrum in a manner which is, among other things, efficient. 47 U.S.C. Section 307 (b). And as stated by Chairman Reed Hundt in his speech at the Pittsburgh Law School, the Commission ought to apply the public interest standard, with concrete duties imposed on broadcasters.

IV. POTENTIAL IMPACT OF THE EXCLUSION OF LPTV BROADCASTERS ON EFFECTS OF ATV TRANSITION TO SMALL MARKET BROADCASTERS

LPTV stations should not be displaced only when an alternative is not available. Adequate notice of any proposed allotment table should be given, along with disclosure of all technical standards so LPTV broadcasters may recommend changes in individual allotments that will minimize any adverse impact upon them.

⁷ Second Report/Further Notice, 7 FCC Rcd 3340, 3353 (1992).

V. HOW THE COMMISSION CAN ACCOMMODATE LPTV BROADCAST STATIONS IN THE TRANSITION TO DIGITAL TELEVISION

LPTV stations should be given an opportunity to apply for remaining ATV spectrum after full power stations have applied for ATV spectrum, before the general public. Furthermore, any spectrum repackaging or recapture should consider perhaps establishing a guard band between full power TV and nonbroadcast services and therefore taking LPTV broadcasters into account.

Polar Broadcasting Inc. supports the comments which oppose the Commission's exclusion of LPTV as primary licensees in the new ATV service. Polar Broadcasting Inc. Television firmly believes that this action by the Commission is a violation of the Constitutional rights of the LPTV broadcasters.

Wherefore, for the foregoing reasons, STATION, respectfully submits that the Commission should revise its proposals in its Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry to insure a more spectrally efficient ATV allotment table and to accommodate low power television broadcasters with an ATV simulcast channel.

Respectfully submitted,

By: 

Dated: November 14, 1995